



Report to:

***The Honorable Joe Manchin III
Governor of the State of West Virginia***

From:

***The Governor's Commission on Prison
Overcrowding***

Respectfully Submitted June 30, 2009

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Governor's Commission on Prison Overcrowding

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Executive Summary

West Virginia borders on the “tipping point” of serious repercussions stemming from insufficient institutional correctional resources and the resulting stressful impact upon our Regional Jails. The demand for prison beds and resultant backlog has grown by over 200 since the inception of the Governor’s Commission on Prison Overcrowding.

The Commission understood from the start that Public Safety must be the highest priority in addressing our overcrowded prison and jail conditions. It also understands that the vast majority of offenders sent to prison will someday return to our communities, and that our course of action should acknowledge that reality. These offenders are citizens also, and the Commission’s goal for those returning to society is for them to become engaged, valued and contributing members of their community.

The Commission has reviewed the correctional capacities and other options available to our criminal justice system. The Commission also looked to see what efforts other states have made when addressing similar issues. Finally, it researched the professional literature documenting and evaluating alternative methods for dealing with criminal offenders that may lead to a reduction of recidivism and reduction in the need for future prison beds.

Based upon our review, the Commission has recommended an action agenda of fourteen items – immediate actions and long term actions – to reduce the demand and meet current and immediate future needs for prison bed-space. The Commission’s comprehensive strategy relies upon: 1) the use of alternative sanctions for low offense level felons in community based corrections; 2) the shortening of the length of stay of offenders for lower risk offenders based upon their rehabilitation rather than punishment alone; and 3) the addition of a new prison providing 1,200 new prison cells, other new prison beds that are already in the planning stage, additional Work-Release Units to assist offenders in the re-entry to their communities and other transitional housing options to assist offenders who have no other home plan.

Our measureable actions to determine whether we can step back from the tipping point are: a) the diversion of 500 felon offenders per year from prison sentence to alternative sentence; b) the reduction in length of stay for certain offenders to free up the equivalent of 200 prison beds per year; and c) the acquisition of at least 1,820 new prison beds.

To accomplish these actions West Virginia will need to invest in additional community corrections capabilities and additional behavioral health and substance abuse services. This investment must come from many sources including state and federal funds where available. However the state will also count on the assistance of communities themselves, including communities of faith, as it targets the prevention of crime through early and appropriate intervention, and with assistance to those who have been incarcerated to transition back to contributing citizenship.

Introduction

The people of the State of West Virginia have long enjoyed one of the lowest reported crime rates in the nation, and continue to enjoy a relatively low crime rate. As a result, we have had the benefit of dedicating only a small portion of the state's budget resources to public safety, and in particular to the correctional system. Compared to other states, West Virginia falls in the bottom fifth of states per-capita in the use of correctional supervision, either imprisonment, alternative sanctions or probation and parole services. While West Virginia has one of the lowest incarceration rates in the nation, ranking thirty-eighth out of the fifty states, **the state does have one of the highest increasing rates of prison growth in the nation, at nearly seven percent annually.**

In recognition of the burgeoning jail and prison population, the Department of Military Affairs and Public Safety hosted a three-day symposium at Stonewall Jackson Resort on September 17, 18 and 19, 2008, to address the issue of jail and prison overcrowding. Representatives from the Executive, Legislative and Judicial branches, as well as experts from across the United States met, presented information, discussed problems and offered solutions. While many suggestions were proffered, the principal recommendation from the symposium was the creation of a commission to study jail and prison overcrowding within the state.

On January 9, 2009, by Executive Order No. 1-09, the Governor of the State of West Virginia established The Governor's Commission on Prison Overcrowding. The Commission met on several occasions since its inception in an effort to tackle the mission and responsibility conveyed to it. The following report is the culmination of research, meetings, problem solving sessions and consensus recommendations.

The Commission recognizes its charter is a narrow one relating directly to the immediate issue of overcrowding in prisons and the spill-over impact upon our regional jails. However, the Commission also noted that prison overcrowding is but one element of our society. If our communities are to be whole, actions in

education, prevention, intervention and community involvement must also be reviewed in light of core values and in a comprehensive fashion by groups similar in make-up and diversity as those on the Commission.

To address prison overcrowding, the Commission looked comprehensively at West Virginia's current initiatives and identified areas where a greater effort is needed. Knowing most offenders will at some point return to a community setting, the Commission looked to identify evidence-based practices that have demonstrated success in reducing recidivism and promoting public safety regardless of whether the offender is punished in the community or is re-entering the community after serving a prison sentence. The Commission recognized through core values that individual offenders need to be sanctioned judiciously and humanely if they are to return to the community and assume a place as contributing individuals. This report reflects the best judgments of Commission members on urgent actions that need to be taken to enhance public safety while creating conditions for more vibrant communities in West Virginia.

This report is respectfully submitted to the Governor of the State of West Virginia by the Commission's Chair, the Secretary of Military Affairs and Public Safety, on behalf of The Governor's Commission on Prison Overcrowding.

Core Values Driving this Report

A perspective on public safety in West Virginia

The current overpopulation crisis in the Division of Corrections and its impact upon the jails and the remainder of the correctional system calls for quick action that is based on a comprehensive view of maintaining a safe West Virginia. The proposals within this report keep public safety paramount. Many different and divergent roads may bring West Virginia out of this crisis, but only certain roads lead to the desired destination of a humane jail and correctional system with appropriate bed space for appropriate offenders. With this in mind, the Commission sought research and analysis and the advice of experts and consumers to help provide the insight and recommendations for solving the overpopulation situation.

Along with being based on the comprehensive view of the problem and toward shared goals for public safety in the state, any action on the part of the state must be consistent with its core beliefs and values.

Core Values

The Governor's Commission on Prison Overcrowding recommends actions to protect and preserve public safety. In so doing, it adopted the following Core Values it believes are consistent with our West Virginia community as a whole:

- Public Safety is paramount.
- Victims of crimes need all of our empathy and support.
- Criminal offenders must be dealt with judiciously and humanely.
- Government action that engages citizen support empowers communities.
- An engaged citizenry provides the best hope of real criminal justice.

In the pages that follow, the Commission provides an overview of the current problem of prison overcrowding in West Virginia. This overview includes an analysis of the data collected by the Division of Corrections and an historical overview of the culture and social atmosphere that contribute to the problem. This report also presents some alternative paths out of the current crisis. Finally, it presents the Commission's recommendations for action with the overall goal of public safety consistent with its core values.

Historical Perspective

Policy changes on a variety of fronts have increased the need for correctional resources. Over the past 15 years or so, the state has seen a steady increase in the demand for prison beds that has put West Virginia in a tenuous position. The state must confront the high costs of incarceration by changing how it deals with the offenders through investments in alternative sanctions and treatment, and resolve itself to invest in the construction of prisons.

Facts

- The Division of Corrections currently has an inventory of 5,015 prison beds. These are not all interchangeable beds as some are reserved for females, intake, or the youthful offender program at the Anthony Center. This means, at times the Division of Corrections will be “full” with a population of less than its bed capacity because there may be too many of one type of offender and not enough of the special population offenders to fill the special cells.
- As of the writing of this report, there are approximately 6,300 offenders who have been sentenced by courts to the Division of Corrections. Given the lack of sufficient bed space, 1,300 excess offenders sentenced by courts, are being held in regional jails until space is available in Division of Corrections facilities. **The number of felony offenders sentenced to the custody of the Division of Corrections grows by approximately three each day.** This has caused severe overcrowding in the regional jail system and has created a panoply of jail management problems. Further, it may contribute to offenders serving a greater percentage of their sentence than would be necessary if they had access to the treatment and services required to prepare them for re-entry to the community. In addition, overcrowding hinders the jails in the performance of their mission of housing pre-trial detention and short-term misdemeanor offenders. Offenders convicted of misdemeanor offenses typically spend less than one year in jail.
- Prison facilities managed by the Division of Corrections are designed to house offenders who have been convicted of felonies. An offender convicted of a felony

offense receives a sentence ranging from one year to life in prison. Therapeutic and/or rehabilitative programs necessary for the successful re-entry of felony offenders are not available in the regional jail system. Jails are designed for pre-trial detainees and misdemeanor offenders who serve relatively short sentences. Most offenders serving misdemeanor offenses serve less than 30 days in jail. Time and space limitations in jails limit the ability to provide rehabilitative programs.

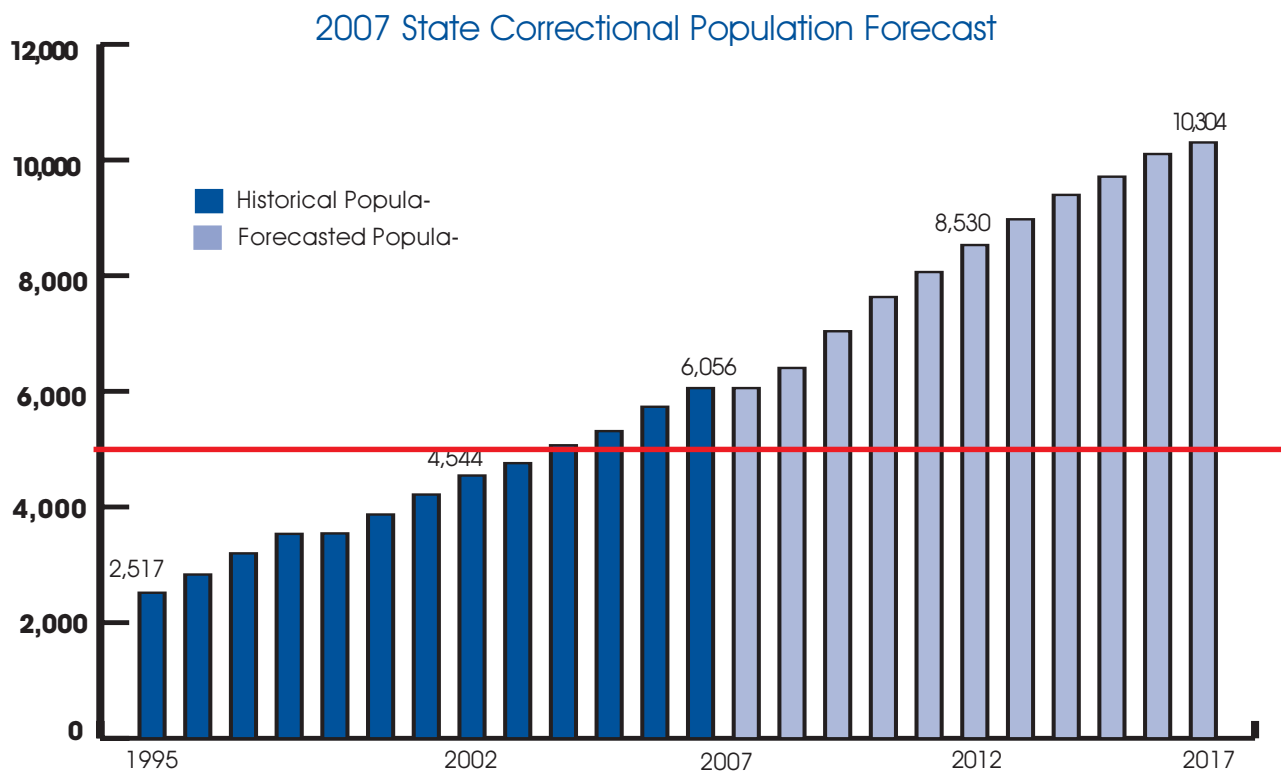
- Given that 90 percent of all prison inmates will eventually return to the community, there is a duty for the state to provide the offender with the programs that will aid in their rehabilitation and return to society.¹ This can only be accomplished if the offender who is sentenced to the Division of Corrections is in their physical custody.
- A recent publication of the Pew Public Safety Performance Project indicates West Virginia has almost as many offenders serving sentences in prison or jail as it has being supervised on probation, parole or home confinement. While this ratio may seem surprisingly high to the common citizen, it is well below the practice of other states. This nearly one-to-one ratio is far below the common practices of other states where the ratio is more frequently 2.5 or 3 community supervision offenders to 1 prison and/or jail offender. West Virginia, in fact, ranks number 50 among all the states in the use of community corrections as an alternative to prison.²
- In 2001, the West Virginia Legislature created the West Virginia Community Corrections Act, found at Chapter 62 Article 11C of the West Virginia Code. To date, approximately 1,000 offenders have successfully participated in drug and

¹ Rehabilitative programs available in Division of Corrections prison facilities include, but are not limited to: alcohol and drug treatment; anger management, domestic violence intervention, crime victim awareness, sex offender treatment, rational and cognitive behavior therapy, job skills training, basic education and GED classes, and long term substance abuse treatment.

² Pew Center on the States, “One in 31: The Long Reach of Americas Correction” (March 2009)

mental health courts, day report centers and enhanced probation programs. This program has saved millions of dollars for the counties in jail fees. While it is difficult to document to date, in theory it has helped to reduce recidivism by being a more effective correctional tool.

- Prison Population Forecasts published by the Division of Criminal Justice Services' Statistical Analysis Center indicate that **by the end of 2012, West Virginia will need bed space for 8,530 offenders and by 2017 that number will grow to 10,304. This will more than double the demand for prison bed space** if the state continues with the policies and practices currently employed by our criminal justice system.³



Source: DOC End-of-Year Tallies, Tracking and 2007 Simulated Forecast

³ WV Correctional Population Forecast: 2007-2017

Contributing Trends

- Since 1991, the West Virginia Legislature has created new laws or expanded the range and severity of punishment of current laws more than 75 times.⁴ This includes a number of “mandatory minimum” sentences during which a person may not become parole eligible.
- From 2001 through 2006, the average length of stay for offenders who have been released from prison for a variety of crimes, has increased significantly (See chart below). For example, a typical burglar released in 2006 occupied a prison bed almost two years longer than a similar burglar released in 2001. This additional length of stay is a major driver of prison space demand, especially among the crime groups that would ordinarily be considered non-violent.

Length of Stay in Months: 2001 and 2006⁵

	<u>2001</u>	<u>2006</u>
Murder	53.6	86.1
Sex Crimes	48.0	45.7
Robbery	55.8	74.2
Assault	25.3	30.0
Burglary	24.3	44.4
Property	21.0	34.9
Drug	14.7	22.7
DUI	11.1	13.7
Other	12.8	20.9

⁴ See Appendix “1” prepared by the West Virginia Division of Corrections.

⁵ WV Correctional Population Forecast: 2002-2012, and WV Correctional Population Forecast 2007-2017.

- From 2002 through 2007 there has been an increase in “property crimes and arrests” and “drug crimes and arrests”. The West Virginia law enforcement community can be credited with significant improvements in detection and investigation of crime. This has corresponded with the surge in admissions for these offenses. In 2006, 76 percent of offenders admitted to Division of Corrections facilities were admitted for crimes considered “non-violent.”⁶ Meanwhile, the measure of violent crime, arrests and convictions remain relatively stable.⁷ The result has been a change in the “stock population” of the Division of Corrections offenders being incarcerated predominantly for violent crime, to the majority of offenders being incarcerated for non-violent crime. It should be noted however, an offender may be serving a sentence for what is considered a non-violent offense, but may have a criminal history of violent offenses preceding the current offense for which they are incarcerated.
- On a positive note, West Virginia has instituted one element of a multi-faceted approach to resolving the demand for more prison space with the implementation of the Community Corrections Act previously mentioned. This action provides authorization for local communities to utilize a wide variety of alternative sanctions to punish and reform offenders at the community level. By holding offenders accountable in the community and requiring them to identify their wrongful behaviors as well as assisting them with attaining educational, employment and independent coping skills, this program can create a cost-effective way to reduce recidivism of certain offenders. Drug and mental health courts have had much success in diverting offenders from jail and/or prison to alternative community sanctions. Nearly 1,000 offenders have successfully completed the program.

⁶ WV Correctional Population Forecast: 2007-2017

⁷ See “Crime in West Virginia” for the years 2002 through 2007

In 2005, the West Virginia Supreme Court issued its opinion in the case of: *State of WV ex. rel. Daniel L. Sams, et al., Petitioners, v. Commissioner, WVDOC, Executive Director of the RJCFA, and the WV Board of Probation and Parole.*⁸

This case involves inmates who filed a writ of mandamus against the Division of Corrections due to their conditions of confinement to compel their transfer from regional jails to the Division of Corrections facilities. The Court noted in its decision that without the involvement of the executive and legislative branches of government, there is no clear solution to the overcrowding problem that has created the issue addressed by the inmates in the case. As part of the opinion issued, the Court stated:

“...we can only urge the other two departments of government to promptly act to address the ongoing issues presented by an ever-burgeoning prison population and to recognize that a failure to act with sufficient alacrity may result in either this Court, or a federal court, being required to intervene in the future.”

and,

“Nonetheless, we are compelled to remind the Executive and Legislative branches of government that action is required to address this continuing and most serious problem of housing inmates outside the DOC system to which they have been committed. Our present inclination to defer to those two branches should not be read as limitless patience with continuing violation of the statutory law of the State requiring State prisoners to be housed in Department of Corrections facilities...”

⁸ 218 W.Va. 572:625 S.E. 2d 334 (2005)

The opinion was issued in September, 2005, and nearly five years later the good intentioned efforts by any single branch of government, without a comprehensive approach to resolve the prison overcrowding problem, have not been successful. The safety and security of the public, regional jail system and correctional system are in jeopardy by the housing of state-sentenced inmates in regional jails. Additionally, the **Division of Corrections, as well as the Regional Jail and Correctional Facility Authority are in jeopardy of intervention and mandates by the West Virginia Supreme Court of Appeals, or of being placed into federal receivership if solutions to the burgeoning inmate population are not addressed.**

The Commission recognizes that no single branch of government can be held responsible for not being successful at solving the problem. The Division of Corrections and the Regional Jail and Correctional Facility Authority have provided reports, testified before legislative committees and otherwise made the overcrowding problem known to numerous governmental and non-governmental entities. While it may be difficult to bring all three branches of government together to solve the overcrowding dilemma, they must work collectively and collaboratively to avoid what will be an even more costly result if the federal government finds it necessary to intervene. The Commission and this report are the most comprehensive efforts to date that address the serious and complicated issues surrounding West Virginia's prison overpopulation.

Finding Our Way

The safety and security of the public, safety and security of the employees of the Division of Corrections and the Regional Jail Authority and the safety and security of the offenders who are sentenced to jails and correctional facilities are of paramount importance to the Commission. The public expects a jail and correctional system that can provide such security.

The question is: "Are there actions that may be taken to protect and improve the level of public safety in West Virginia which are more beneficial and more effective than the incarceration of offenders and the acquisition and operation of significant new institutions?"

For answers to that question, the Commission looked to the practices of other states which have confronted this issue and the literature of scientific evaluations of various techniques that have been attempted to confront criminal behavior. The Commission gained knowledge from those who have studied these techniques that by investing in a variety of practices and services at the community level, many “low level offenders,” offenders who have not committed violent crimes against the person or otherwise wreaked wide-spread damage to our citizens, are better managed and diverted from further criminal behavior by application of intermediate, community-based sanctions, both punitive and restorative.⁹ Incarceration often has a more detrimental effect than rehabilitative effect, in that it produces a more skilled, motivated offender. Research indicates extended lengths of stay actually increase the likelihood of recidivism. The Commission also learned from studies and from efforts initiated by the United States Department of Justice Re-entry Program that it is important to address an offender’s skills and needs from the time the offender enters prison until he or she is released. Further, a gradual, counseled release of an offender is more likely to reduce recidivism than simply turning the offender out, directly from the prison, onto the street with no skills, resources or direction.

A simple analysis of the West Virginia prison overcrowding problem is there are too many offenders being sentenced to institutional correctional services and too few beds or cells in the Division of Corrections’ facilities. Corrections is “the end of the line”, and has no authority to refuse to take offenders who have been arrested, convicted and sentenced by the Court. Assuming a relatively stable number of offenders in the near future, there are three distinct actions that need to be taken to ease the demand for prison bed space.

⁹ Steve Aos, Marna Miller, and Elizabeth Drake. (2006) *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*. Washington State Institute for Public Policy.

Possible Actions

1. **Alternative Sanctions:** Identify those offenders whose crimes may not have been too serious and sentence them to an appropriate level of community supervision and correction.
2. **Appropriate Reduction in Length of Stay:** Identify offenders who are sent to prison who may be able to modify their behavior with services addressed to their needs and assure they receive these services in a timely fashion so parole decisions can be made for early re-integration into the community.
3. **Build and acquire additional prison capacity:** Identify not just the number of additional beds required, but also “build smart” – acquire beds according to the security AND rehabilitation needs of the offender population anticipated in the upcoming years.

As seen below, the Commission believes only a combination of all three actions will resolve the problems the corrections’ system faces.

Other states have found themselves confronting the same problems, and much can be learned from their actions.. What is helpful for the Commission is the ability to be in the position to review the relative costs and successes of these various approaches. The Commission is aware of states that attempt to build their way out of the problem only to find more prisoners to fill the spaces. Meanwhile Connecticut, New Jersey, New York, Ohio and Massachusetts have actually reduced their overall prison populations with no endangerment to the public.¹⁰ Other states have instituted processes to slow the growth of prison bed requirements by initiating reforms which show promise of avoiding some, if not all, future prison construction.¹¹

The Commission also reviewed research in the social sciences that identified a variety of strategies and programs which have actually reduced recidivism among some offender populations. There are programs that work. In many cases, investing in programming at the

¹⁰ Michael Jacobson. *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration*. New York; NYUP, 2005

¹¹ Washington State, Kansas, Pennsylvania, Texas. Cited in “1 in 31” above.

front end of the process, at original sentencing, with sanctions and services in the community has produced desirable outcomes for a return on investment far greater than the cost of new bricks and mortar construction.¹²

The Commission's recommendations are premised upon the ability to clearly identify sufficient populations of offenders who may safely be diverted from prison, and reduce their risk of recidivism. Further, identify those who are imprisoned who may be released at the earliest legal opportunity on parole provided they have received the services necessary to correct their future behavior. For offenders so identified, the goal should be minimal retribution and maximal integration or re-integration into productive and peaceful community membership. **Knowing three quarters of prison admissions in West Virginia are for non-violent, property and drug crimes, and knowing also that West Virginia has historically used community correctional services less than all but one other state, the Commission believes that by investing in all levels of community and institutional services, at least 500 offenders per year can be diverted. The Commission also believes that by significantly reducing length of stay for other offenders in this population of non-violent, property and drug crime, an additional 200 prison beds per year could be made available.** To achieve these efficiencies it is necessary to increase the arsenal of tools available to judges, correctional officials, parole board members and communities themselves.

Historically judges in West Virginia have had few options for convicted offenders – namely jail, prison, or suspended jail or prison sentence with probation. Until the passage of the Community Corrections Act in 2001, probation and parole officers had few tools, other than supervision and enforcement of the conditions of offenders released to their custody. Widespread community corrections programs have increased the tools available to sentencing judges. In moving forward, the state must utilize an even more complete set of tools to include services in behavioral health, substance abuse treatment and intervention, and social, educational and job skills in a cohesive fashion to reduce recidivism and prevent additional crime.

¹² They have also been able to identify programs that don't work to reduce recidivism, and, in fact found programs that, if invested in, are likely to increase the risk of new or further criminal activity. See e.g. "Steve Aos et.al."...above

What is the Solution?

Comprehensive Agenda for the West Virginia Criminal Justice System

- Only a comprehensive agenda will work; one that entails prevention through various crime prevention strategies to include greater citizen participation and use of community behavioral health and substance abuse services for both prevention and re-entry services.
- The diversion of low-level felony offenders, who are eligible for prison but who don't require high security, to day report centers, other community based alternative sentencing, and probation where not only is supervision provided, but also the educational, social, job-skill and substance abuse needs can effectively be addressed in the community setting.
- Consideration of the policy issues behind the length of stay of offenders sent to prison, including possible statutory changes to parole eligibility and a complete examination of the State Criminal Code to address societal expectations, norms and fiscal capacity.
- The Commission recommends the addition of a variety of beds operated by the Division of Corrections to include work-release facilities, additions to current facilities where possible, and the identification of appropriate transitional housing services for persons making the difficult transition from structured prison life to life in the community, as well as construction of a new medium security prison.

Unless actions are taken in each of these areas, West Virginia will not be able to resolve its overcrowded prison population problem.

Some of the recommendations made cross into each of the four agenda items listed above. There must be a clear understanding and comprehension of how all the activities of the criminal justice system from arrest, through adjudication, punishment and restoration, impact each other and the resources that must be dedicated to these elements. The Commission has developed a combination of 14 specific recommendations that will substantially reduce the need for at least half the prison bed requirements forecasted in the most recent prison population forecast. This will be accomplished by reducing admissions, reducing recidivism and making West Virginians even safer than they are today.

Modern assessment tools have demonstrated the ability to effectively measure the “risk” or “propensity” of future criminal behavior; the “needs” of the offender that produce that risk; and recommendations for addressing those needs or propensities with a result of reduced risk.¹³ Up to this point the criminal justice system has not systematically assessed the “criminogenic”¹⁴ tendencies of individual offenders. Therefore offering services which would reduce those needs has been haphazard at best. Anecdotally, large numbers of offenders in prison have substance abuse problems, or at least were under the influence of drugs or alcohol at the time of the offense. A significant number of offenders in prison have serious mental health issues; issues that may have contributed to their criminal behavior.¹⁵ By adopting a standardized and validated risk and needs assessment instrument for every convicted felon and administering the instrument before sentencing, or before other significant decisions relating to the offender, decision-makers can best provide a management plan that will address offenders needs and prepare him/her for a successful return to productive citizenship. Informed decision-making can aid in providing a continuity of rehabilitative services - whether initiated by the court, community corrections or prison setting - that can continue with the offender until his/her eventual release from the custody of the court or Division of Corrections. A continuity of services should reduce recidivism and future criminal behavior on the part of the offender.

Economic impact:

Diverting low to moderate risk offenders - those with less propensity for future criminal behavior - from Division of Corrections facilities into community corrections will save bed space in West Virginia prisons for violent and higher risk offenders. In 2008, the annual average cost to house an offender in Division of Corrections custody was \$28,000 and, despite all efforts for efficiencies, costs have continued to rise approximately 4 percent annually for the past five years.

Commission Recommendations

1. The foundation of our path forward will be the application of a “Risk – Need – Responsivity” Model of correctional intervention

¹³ See for example Andrews and Dowden, “The Risk-Need-Responsivity Model of Assessment and Human Service in Prevention and Corrections: Crime-Prevention Jurisprudence” Canadian Journal of Criminology and Criminal Justice, October 2007.

¹⁴ Defined as “Producing or tending to produce crime or criminality.”

¹⁵ Doris J. James and Lauren E. Glaze “Mental Health Problems of Prison and Jail Inmates” United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics 2006.

The cost to administer and score a risk and needs assessment exam is estimated to be approximately \$20 per offender, which includes the purchase cost of the instrument and the administrator's time. Approximately 4,000 charged felons go through the court system in a year. If an anticipated 500 offenders per year are diverted to community corrections, the cost savings benefit would be \$14 million. The more community corrections programs are willing to expand, the cost savings could be even greater.

Diverting more low-risk offenders to community corrections will allow the Division of Corrections to utilize bed space for violent and higher risk offenders. Jurisdictions with community corrections and day report centers can provide the necessary treatment to the offender and allow them to remain employed, pay taxes and contribute to society. Offenders can contribute to society while on home confinement, electronic monitoring, and/or intensive supervision.

Research indicates incarceration can increase the risk levels of offenders; thereby increasing the likelihood of recidivism for some offenders. As a consequence, research on juvenile and adult correctional treatment reveals that treatment in public facilities and correctional institutions has less impact on recidivism than treatment in community settings.¹⁶ Research also shows adult correctional treatment can be effective at reducing criminal recidivism, primarily when combined with post-prison supervision and treatment.¹⁷ Additionally, research on the length of prison terms support the conclusion that punishment in itself has little or no effect on recidivism.¹⁸

¹⁶ Lipton, D., and Pearson, F.S. 1996. The CDATE Project: Reviewing research on the effectiveness of treatment programs for adult and juvenile offenders. Paper presented at the Annual Meeting of the American Society of Criminology, Chicago, IL.

¹⁷ Andrews, D.A., Bonta, J., and Hoge, I. 1990. Classification for effective rehabilitation: Rediscovering psychology. *Criminal Justice and Behavior* 17(1):19-52.

¹⁸ Lispey, D. and Cullen, F. 2007. The effectiveness of correctional rehabilitation: A review of systematic reviews. *Annual Review of Law and Social Science*. 3: 297-320.

Historically, community corrections referred to probation and parole services. In recent years, that term has been expanded to a much broader definition and now includes various types of community supervision programs that provide the offender with much-needed rehabilitative and therapeutic programs in the community, as opposed to jail or prison.¹⁹

2. Expansion of Alternative Sanctions

Alternative sanctions capabilities include the services of probation, parole and of the community corrections programs pursuant to §62-11C of the West Virginia Code. The latter programs currently involve a variety of services managed through 18 community based programs and serve 51 of West Virginia's 55 counties. It is imperative that these current programs are sustained through funding sources dedicated to those programs. Without a sustainable source of funding, the alternative sanction programs in place would be eliminated, and offenders who participate in such programs would be sentenced to jail or prison and would contribute even further to the overcrowding dilemma.

Expanded Probation:

During the 2009 legislative session, Senate Bill 760 passed authorizing the West Virginia Supreme Court to develop a pilot pretrial release program that will target nonviolent misdemeanants in hopes of reducing regional jail populations of short term detainees.²⁰ Probation officers will bear some of the burden of supervision of these detainees. The implementation of this program and other diversion and alternative sentence sanctions will increase the case loads of probation officers within the state. Additional probation officers will be needed to effectively supervise the offenders in the community.

Expanded Parole:

Increasing the number of parole officers will allow more offenders to return to the community earlier, gain employment and be contributing members of society. Parole officers serve a function of supervision as well as coaching and assisting re-entering offenders

¹⁹ Programs include supervision, day fines, restitution, home incarceration, substance abuse, sex offender treatment, day report centers drug courts, and educational and counseling services

²⁰ West Virginia Code §62-12-68

in becoming part of the community. In order to serve the dual function of supervisor and coach, parole caseloads must be reduced so adequate time can be devoted to the individual offender. If risk and needs assessments allow for earlier parole release, there will be a need for additional parole officers to handle the increased caseload. **The Commission recommends hiring an additional 10 probation officers and an additional 15 parole officers** to manage the increased caseloads that will be required for both diversion from prison and shortened length of stay for imprisoned offenders.

Expanded Community Corrections:

Current community corrections programs managed by local jurisdictions offer another significant resource of treatment and sanctions in the community. Most of the 18 operational programs operate as day report centers to which offenders must report for a variety of services including drug screening and counseling, and vocational and job training. Offenders also must work in appropriate community programs as restitution. These programs access other behavioral health services as needed. Most of these programs are set up to handle low-level offenders who may be at high risk of re-offending or of further intrusion into the criminal justice system. Some are indeed diversions from prison, while others have been convicted of misdemeanor offenses and are diverted from jails. The role of these programs can be expanded to serve offenders who are returning to the community from prison. Day report centers may provide a source of services that have otherwise been lacking in the treatment equation relating to rehabilitation. Further, these programs often have the best connections with other service providers and may be a conduit for offenders needing transitional living arrangements as well as drug and alcohol monitoring as part of their transition. **The Commission recommends expansion of these program capacities to handle a growing caseload of felony offense diversions and to assist in the re-entry process for a limited number of parolees according to the risks and needs identified for that population.**

Unfortunately, many offenders suffer from mental health or substance abuse problems or the co-occurrence of mental health and substance abuse. Frequently, these problems contribute to or coincide with their criminal behavior. Prevalence of these factors in prison and jail populations are typically four to eight times greater than in the general population.²¹ The West Virginia Division of Corrections does in fact serve significant numbers of offenders with serious mental health issues. **As of the date of this report 750 inmates in the Division of Corrections' custody were on psychotropic medication, which represents 19 percent of the prison population, and 717 inmates have been diagnosed with an Axis I diagnosis.**²² This figure does not include the inmates in jails who have not yet been transferred to the physical custody of the Division of Corrections.

3. Increase the State's Substance Abuse Treatment and Mental Health Treatment Capacity

With assistance from the Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities (BHBF), a number of initiatives have been identified that can be utilized to divert offenders or prevent their anti-social behavior before it becomes criminal. These include:

- a. One 10 bed substance abuse residential treatment unit with length of stay of up to 90 days specifically for males ages 18-27:**

According to the U.S. Department of Justice, participation in crime declines with age and young people make up the largest percentage of offenders entering the criminal justice system. The *2007 Sourcebook of Criminal Justice Statistics* reveals that people 15 to 19 years old made up 20.7 percent, people 20 to 24 years old made up 19.4 percent and ages 25 to 29 made up 14.1 percent of arrests

²¹ Council of State Governments Justice Center "Improving Outcomes for People with Mental Illnesses under Community Corrections Supervision" 2009.

²² Axis I diagnoses consist of, but are not limited to, acute stress disorder, panic attack disorder, obsessive-compulsive disorder, post traumatic stress disorder, delirium, kleptomania, pathological gambling, pyromania, bipolar disorder, depressive disorder, substance induced mood disorder, schizophrenia (paranoid, undifferentiated, residual), psychotic disorder, pedophilia, voyeurism, insomnia, sleep disorder, and various substance abuse disorders.

nationally for a total of 54.2 percent of the nearly 11 million arrests nationally. Of those arrests in 2007 nationally, over 7 million were committed by males, or 75.8 percent and nearly 2.3 million by females, or 24.2 percent. The Office of Justice Programs has found that **drug users are more likely than nonusers to commit crimes and those arrestees were often under the influence of a drug at the time they committed their offense.**

The Office of Justice Statistics also demonstrates that 44,488 adults were arrested in West Virginia in 2007, with an estimated 34,000 of those being male. If 10 percent of the males arrested need treatment, or 3,372 people, and 337 of those are, conservatively, young adults, and these 10 beds can serve as many as 40 people during a given year (each bed can serve four people a year for a 90 day stay), 297 of this group may have to wait at a year or more to get access to this program. **It is important to note, however, West Virginia does not currently have any programs that focus solely on this population** so this estimate of demand is more speculative than any of the others. Success with this population in treatment reduces the likelihood of their entry into the criminal justice system. According to a June 1998 Research Update issued by Hazelden’s Butler Center for Research, titled “Outcomes of Alcohol/Other Drug Dependency Treatment,” one cost-benefit study found that for **each \$1 invested in treatment in California, taxpayers saved \$7 in reduced health and social costs.**²³

b. Medication assisted Treatment of Opioid users:

This report recommends expanded access to medication assisted treatment by utilizing both methadone and buprenorphine. Both of these medications have demonstrated efficacy in the treatment of opioid dependence. Opioid treatment programs (OTP’s) offer each of these forms of medication assisted treatment and are regulated by both the federal and state government Buprenorphine is also available at many of the regional comprehensive behavioral health centers throughout the state. Each center must follow state regulations

²³ Gerstein, D.R. & Johnson, R.A., (July 1994). Evaluating recovery services. The California drug and alcohol treatment assessment (CALDATA). *National Opinion Research Center*.

regarding behavioral health centers and maintain the appropriate behavioral health license to provide this service. Buprenorphine, which was approved by the United States Congress in October 2000 for use in treatment of opioid dependence, via passage of the Drug Addiction Treatment Act.

Methadone is regulated as a controlled substance, under both federal and state statute and regulations, when used for pain management and addiction treatment. When methadone is used for pain management, it is regulated under federal and state statute and regulations that apply to controlled substances generally which do not impose requirements unique to methadone. For addiction treatment, however, federal and state statute and regulations impose additional requirements that are specific to the use of methadone in OTPs, which treat and rehabilitate people addicted to heroin or other opioids. These statutes and regulations act as a safety net to ensure that this evidence-based treatment maximizes its benefits while not disregarding the risks of its use, misuse and abuse.

Although information on methadone-associated overdose deaths is limited, available data suggest that methadone's growing use for pain management has made more of the drug available, thus contributing to the rise in methadone-associated overdose deaths. Methadone prescriptions for pain management grew from about 531,000 in 1998 to about 4.1 million in 2006; a nearly eight-fold expansion. Methadone has unique pharmacological properties that make it different from other opioids, and as a result, a lack of knowledge about methadone among practitioners and patients has been identified as a key factor contributing to these deaths. United States Drug Enforcement Agency data suggest that abuse of methadone diverted from its intended purpose has also contributed to the rise in overdose deaths, as the number of methadone drug items seized by law enforcement and analyzed in forensic laboratories increased 262 percent, from 2,865 in 2001 to 10,361 in 2007. Nonetheless, data and research from five states reviewed by the U.S. Government Accountability Office suggests that the specific circumstances of these deaths are variable due to methadone being

used in combination with other drugs and uncertainties about where it came from.

At the time of the report, there are currently 4,500 methadone clients in West Virginia, and the Bureau for Behavioral Health and Health Facilities estimates that there may be another 4,000 additional people who would likely benefit from access to buprenorphine, methadone or another form of medication assisted treatment.

All nine OTPs in West Virginia submit data to BHHF on a quarterly basis and the state level data supports the national level data. Additionally, hundreds of peer-reviewed studies indicate people receiving methadone or buprenorphine along with other substance abuse treatment demonstrate highly successful outcomes in areas such as reduced crime, increased employment, decreased health care costs, etc.

This positive outcome data applies to those who stay in treatment for one year or more. Outcome data for those in treatment less than one year is still favorable, but best results are obtained for individuals who are treated for more than one year with methadone or buprenorphine. As is true with all forms of addictions, long-term treatment is the only approach that consistently works. For example, during the third-quarter of 2008 in West Virginia, for people receiving at least 12 consecutive months of methadone treatment:

1. 98% were not arrested/re-arrested,
2. 78% had negative drug screens, and
3. 69% were employed.²⁴

As noted elsewhere in this report, the number of offenders admitted to the Division of Corrections has risen significantly in the past five years. This appears to be related to the increase in the availability of Oxycontin and similar drugs, as well as the burst of methamphetamine use throughout the state. If substance abusers can be identified and diverted before further criminal activity, additional prison beds can be saved for the dangerous and higher risk offenders.

²⁴ Bureau for Behavioral Health and Health Facilities, Office of Behavioral Health Services, Division on Alcoholism and Drug Abuse bi-annual reports

c. Four 20 bed detoxification units with length of stay of up to 10 days:

These units are intended to serve individuals who are experiencing signs and symptoms of severe withdrawal and there is a strong likelihood that the individual will require medication for withdrawal symptoms. Without detox, these persons will not complete another level of care or enter into continuing treatment or self-help recovery because of inadequate home supervision or support structure.²⁵

Currently, statewide there are two providers of medically monitored detoxification services and 23 beds. The average length of stay for these beds is five to 10 days, with an estimated four-week wait time to access them. BHHF anticipates that this 261 percent increase in capacity could help better meet both current and anticipated demand in West Virginia by eliminating the wait time.

d. Eight 10-bed long-term substance abuse treatment programs with up to 90 day stay – for males:

Current wait lists for these services are up to 120 days. Eighty new beds would increase bed capacity by 264 percent and could eliminate the wait time. This decreased time spent on a wait list is a conservative estimate and in fact could be shorter. Immediacy of treatment is critical in substance abuse and the current capacity often goes beyond that window of opportunity for the abuser to realize the need to change. The importance of this “immediacy of treatment” cannot be overemphasized. When a substance abuser makes the decision to seek treatment, the length of time he or she must wait to enter treatment is a critical factor in their prospects for recovery. This willingness to be a proactive, responsible participant and to commit to change by participating in the treatment process is a fragile component that, as time goes by, may diminish due to barriers such as wait lists, transportation and finances. **The longer an individual must wait for treatment, the more likely they are to turn back to substance abuse and the destructive behavior patterns associated with it.**

²⁵ American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition – Revised, 2001

e. Two 12 bed transitional living programs for males:

“Fellowship Homes” are community sponsored transitional living quarters for persons recovering from addiction who have been in more intensive in-patient or other institutional treatment.

Currently there are six Fellowship Homes for men with a total bed capacity of 70. Most of these transitional clients are persons from substance abuse rehabilitation. These programs may be appropriate to assist local community correction programs with diverted offenders who have not yet been hardened by their exposure to prison.

Staff at transitional living homes, or Fellowship Homes, will need to have access to the above described training to learn about how best to serve those who are coming out of incarcerated settings. However, this level of care is to be accessed in almost all cases after specified treatment has been successfully completed and the individual has been assessed as ready for this level of care. In addition, it is important to bear in mind that transitional living programs will include a mix of individuals and not be exclusive to people coming from correctional settings. This “therapeutic community” can be a positive aspect for people accessing this level of care through positive peer influence, mentoring and positive relationships with staff, some of who will likely be in recovery themselves. Those accessing this level of care must also be able to be employed in order to contribute a portion of their expenses each month toward the program’s needs. This requirement fosters personal growth of the individuals’ self-esteem and results in more favorable treatment outcomes.

f. Twenty 7-bed Oxford Houses with no maximum length of stay.

Oxford House is a concept in recovery from drug and alcohol addiction. In its simplest form, an Oxford House describes a democratically run, self-supporting and drug free home. Parallel to this concept lies the organizational structure of Oxford House, Inc. This publicly supported, non-profit 501(c)3 corporation is the umbrella

organization which provides the network connecting all Oxford Houses and allocates resources to duplicate the Oxford House concept where needs arise.

The number of residents in a House may range from six to 15; there are houses for men, houses for women, and houses which accept women with children. Oxford Houses flourish in metropolitan areas such as New York City and Washington D.C. and thrive in such diverse communities as Hawaii, Washington State, Canada and Australia; but they all abide by the same basic criteria.

Each House represents a remarkably effective and low-cost method of preventing relapse. This was the purpose of the first Oxford House established in 1975, and this purpose is served, day by day, house after house, in each of over 1,200 houses in the United States today.

A recovering individual can live in an Oxford House for as long as he or she does not drink alcohol, does not use drugs and pays an equal share of the house expenses. The average stay is about a year, but many residents stay three or more years. There is no pressure on anyone in good standing to leave.

There are currently eight houses in West Virginia now (three for men in Charleston, one for women in Dunbar, three for men in Huntington and one for men in Parkersburg) with seven beds in each house for a total of 56 beds. If 20 new houses and 140 new beds are added to the service array, this would increase the state's bed capacity by 250 percent and could reduce wait times for inmates reentering society from prison or jail.

Oxford Houses would be expanded statewide if the requested funding described above is received. The current limitations are based on having to rely on one Outreach Coordinator to get the program off the ground in West Virginia. The program initially went north to Parkersburg and Wellsburg in support of drug court activities in those regions. Houses were also established in Charleston and Huntington because those are the two largest cities in the state and have the highest corresponding need.

One recent longitudinal study looked at the outcomes after following 897 Oxford House residents (604 men; 293 women) located in 219 Oxford Houses around the country following an initial interview and follow-up in four waves divided by four-month intervals. At the outset of the research, each participant named an “important person” who knew him or her and could be used by researchers to verify abstinent claims of participant. Major findings include a relapse rate at end of period (approximately two years) of 13.5 percent. The 87 percent clean and sober outcome is four to five times greater than “normal” outcomes following detoxification and treatment.²⁶

g. Three 50 bed Recovery Programs:

These programs would be based on a continuity of service concept similar to a program called “The Healing Place” in operation in Louisville, Kentucky. The model has proven effective in diverse metropolitan areas and may be used following short term residential treatment or by exception, in lieu of formal treatment. Coordination with drug courts and community corrections programs can make these an effective alternative for offenders whose needs are more related to their mental health or substance abuse problems than to other criminogenic tendencies.

4. Transitional Housing for Offenders

Fund transitional housing programs for offenders who were granted parole, but lack sufficient support in the community and cannot leave the institutions. Transitional housing is needed for nearly 50 offenders who have been granted parole, but lack suitable housing solely due to having no residential options. The West Virginia Parole Board cannot grant parole to an offender who does not have an approved home plan.²⁷ There are typically several hundred offenders who are parole eligible and upon the granting of parole could return to the community, however there is no suitable living arrangement for them.

²⁶ Addictive Behaviors 32 (2007) 803-818

²⁷ West Virginia Code §63-12-13

Transitional housing programs will allow the offender to leave the Division of Corrections' custody under parole supervision and return to the community. The Division of Criminal Justice Services and the Division of Corrections have engaged in conversations with the West Virginia Council of Churches to initiate church sponsored support of offenders who have no community living options.

In order to effectively live in the community after long periods of incarceration, offenders need transitional housing and community support in order to succeed.

An example of the type of program that could evolve is one from the Georgia Department of Corrections. Georgia established a "Re-Entry Partnership Housing (RPH) program as a means to provide housing to convicted felons who remain in prison after the Parole Board has authorized their release due solely to having no residential options. Re-Entry Housing Partners must provide (directly or through written agreement with third parties) released offenders with stable room and board. The goal is to provide the offender a period of stability to enhance their ability to remain crime free. Participating housing providers will be compensated monthly for a term generally not to exceed three months. Grantees to the program (housing providers) are certified by staff from the state Board of Pardons and Paroles and the Department of Corrections. The facilities are routinely inspected or visited by parole staff.²⁸

Legislatively authorize an expedited start-up program to free Division of Corrections bed space, based on identification of special populations of offenders. Statutory language can be amended to provide for the release of some offenders on early parole status, consistent with public safety and an analysis of the offender's risk and needs assessments. A review and re-examination of statutory good time is also appropriate.

Presumptive parole creates an assumption that without institutional disciplinary infractions and with completion of a

5. Establish a policy of "Presumptive Parole"

²⁸ <http://www.dca.state.ga.us/HOUSING/SPECIALNEEDS/PROGRAMS/RPH.ASP>

treatment plan created with the assistance of the risk and needs assessment, the offender will be paroled on a specific date. Instituting presumptive parole for offenders will allow offenders who are motivated toward change and rehabilitation the opportunity to leave Division of Corrections facilities under parole supervision at an earlier date, provided that the Parole Board conducts an interview with the offender and deems early release appropriate for rehabilitation and public safety.

Establishment of presumptive parole increases the likelihood of shortened length of stay for offenders in a particular class, thereby freeing additional prison bed-space. The Legislature should be involved in determining to which crimes presumptive parole may be applied.

The program of presumptive parole can be effective only if the offender is in the physical custody of the Division of Corrections and is afforded the rehabilitative and therapeutic programs offered by the Division of Corrections.

6. Comprehensive Review of the West Virginia Criminal Code

Does West Virginia’s Criminal Code and entire sentencing structure enhance public safety?” If yes, can public safety be enhanced in a more cost effective manner that meets the needs of the victim, the offender and the community at large?”

Changes in the West Virginia Criminal Code that lengthened sentences and created new crimes and punishments for those crimes, have been enacted every year for decades without proper planning for the consequences. **A complete review and overhaul of the Criminal Code of West Virginia to bring it to contemporary societal standards should be undertaken** (See Appendix 1). From examination of those sentence revisions it appears the primary purpose was to deter crime through more severe punishment. As previously noted in footnote 15, research indicates that community based

sanctions or shorter prison terms with appropriate therapeutic services to address the social needs of the offender produce a reduction in recidivism compared to those simply kept longer in prison.

A concerted and collaborative effort by the three branches of government and the law school at West Virginia University, should be initiated to bring the West Virginia Code to contemporary societal standards. Scholars from the Criminal Justice Statistical Analysis Center as well as universities in West Virginia can provide input on the behavioral effects of various sentencing schemes. In addition, expert advice and support is available from the National Governors Association, Center for Best Practices, the Council of State Governments, and/or the American Law Institute in providing models and comparisons of laws in states where criminal code reform has brought about reductions in prison costs while promoting public safety.

The West Virginia Supreme Court **must** complete its probation data information system and ensure that it is compatible with sharing information throughout the criminal justice system. In addition, lines of connection should be established with other databases, i.e., the Department of Health and Human Resources, the Regional Jail and Correctional Facility Authority, the Division of Corrections, the West Virginia Parole Board and others on a mutual need basis. The information system must be as comprehensive as possible. As part of the system, data must be collected on each risk and needs assessment conducted, sentencing outcomes in circuit courts, probation data, community corrections data, Division of Corrections institutional data and parole data.

New data sources need to be developed and others need to be improved in order to provide the information necessary to better understand both sentencing practices and the offender populations in West Virginia. **Currently, we do not know enough about such practices and the risk levels and needs of offenders housed in our institutional facilities and community correction programs**

7. Improve the collection and sharing of criminal justice data in electronic format

to generate data-driven solutions. The development of such data sources should be accompanied with a sustained research agenda that centers around studying and monitoring the factors that can lead to prison overcrowding (i.e., sentencing decisions, use of alternatives, proper classification of offenders, community supervision of offenders, etc.).

Data Elements Necessary for Research Agenda:

Individual level offender data: In order to obtain an accurate picture of the unique characteristics of offenders and cases, it is necessary to measure the factors that commonly influence both sentencing and classification/supervision decisions. Such data is often captured in pre-sentence investigation reports and commonly used risk and needs assessment instruments.

Probation data: Currently little is known about who is being sentenced to probation and the supervision and services they receive once on probation. As a consequence, we know little about offenders who do and do not successfully complete their probation periods and the extent to which they contribute to crowding conditions in state facilities. Without such information, it is difficult to identify effective strategies for diverting offenders from the prison system and learn about “what works” in community supervision and treatment in the state.

Jail population data: While some data on the jail population is captured, it is oriented toward operational decision-making and, therefore, does not capture offender characteristics that are commonly related to recidivism. It also does not capture information useful for making decisions about whether these offenders could be placed in alternative programs or community-based interventions, including social service programs. While some potentially useful information is collected by the private health provider, a mechanism for gaining access to these data for analytical purposes is needed. **Currently, little is known about the substance abuse and mental health needs**

of offenders serving time in jails, or the services they receive prior to arrest. This in turn gives little guidance to policy-makers who need the information to determine whether other non-criminal justice interventions may more effectively and more humanely deal with these behavioral health issues.²⁹

Court caseload and sentencing/conviction data: It is not possible to discuss the influence of sentencing practices on prison beds without better understanding judicial decision-making and current court caseloads. While efforts are currently underway to establish a data collection system, it is equally important that once the system is developed that proper steps are taken to ensure that the data necessary for conducting sentencing research is captured. Researchers and others who will be charged with the task of analyzing the data captured by these systems should be consulted during the development stages. Court data should include information about the offense, sentence and individual characteristics of the offenders (including risk level and needs) entering and being sentenced in the state's courts.

The Commission recommends a “users group” be formed to work with the Office of Technology to identify the specific data shortcomings, impediments to sharing data (both cultural and legal) and identify a plan to move forward. All data systems should be developed, or when modified, adapted to the latest national information exchange standards, which in turn may open the opportunity to receive federal grant funding for implementing these changes.

²⁹ The Global Justice Information Sharing Initiative (GLOBAL) a Federal Advisory Committee under the United States Department of Justice has worked to develop standards for data definitions and methods of electronic data sharing. Grants to develop software in the Justice system must agree to comply with standards established by GLOBAL. For further information about information sharing see <http://www.it.ojp.gov/default.aspx?area=globalJustice&page=1019> (Last seen July 22, 2009).

8. Conduct process and outcome evaluations on the effectiveness of community corrections programs

Confirmed analytical study is necessary to assist in determining the success of community programs. Research evaluations can be used by managers to improve the performance of the community-based programs and by local community criminal justice boards to better assess their spending decisions for treatment. The evaluations should look to compare success and failure rates of various offenders sentenced to community corrections and help determine whether some offenders are receiving more services than would be required to alleviate their needs. **The Commission recommends that the Division of Criminal Justice Services Statistical Analysis Center conduct these evaluations.** The Division of Criminal Justice Services should further draw upon the resources of universities in West Virginia and work with the other experts in the field of corrections to establish a research and evaluation schedule that will provide performance indicators to determine where further system improvement could enhance public safety and cost effectiveness in policies.

Various correctional strategies already exist that validate certain practices for effectiveness and compare the cost of those practices to the cost of incarceration. The Washington State Study (footnote 10) is the most comprehensive study to date that looks at a variety of alternative sanctions, interventions and prevention strategies and compares the costs of implementation to the cost of traditional sanctioning. Another example is the “Public Safety Plan” by the Oregon Criminal Justice Commission where they project possible savings from investments in alternative sanctions, and then follow up with more research investments to assess how those strategies are working to diminish the need for additional prison construction.³⁰ **Evidence based practices are only effective if implemented and utilized by decision-makers.** The Commission believes that the community corrections programs established under authority of §62-11C of West Virginia Code provide a basis for successful alternative sanctioning. Nevertheless, an assessment of how well the process of the program is implemented by a neutral observer, together with recommendations for adjustments or improvements where necessary, can assure the state that it is achieving its public safety goals in the most cost-effective manner possible.

³⁰ “Report to the Governor and Legislature – Public Safety Plan”, Oregon Criminal Justice Commission, Salem, OR (2001)

Representatives from the Governor's Office, the Governor's Commission on Prison Overcrowding and other public officials should hold public meetings in specific geographic areas of the State to dialogue with the public on the need for an agenda to ease prison and jail overcrowding. The Department of Military Affairs and Public Safety, in conjunction with the Governor's Office, should plan and coordinate this campaign to assure that the general public and the electronic and print media are fully informed and able to effectively convey information. These resources are tools to reach out to every citizen and remind ourselves of our core value of being members of communities with responsibilities to be informed and to share this information with family, friends and neighbors.

These recommendations represent a break from conventional thinking and tradition in West Virginia. Previous correctional thinking concentrated on crime and punishment with little emphasis on rehabilitation and understanding of the extra efforts such rehabilitation takes. However, knowledge and understanding help foster acceptance, especially if it can be shown that use of the community to a greater degree in treating offenders and returning them to productive life actually increases public safety. Our dialogue must reach community leaders as well as the community at large and needs to reach the width and breadth of the state.

The Commission is proposing that measureable actions not only must be initiated, but also maintained and monitored for effectiveness. Without continued oversight and direction, these efforts may dissipate the energy that is required to assure we create a safer West Virginia. The Commission believes that an oversight group be charged with the task of continual monitoring of the needs and capabilities of the correctional system as a whole, with requirements to inform the executive, legislative and judicial branches on a regular basis. The group cannot be effective unless comprised of representatives from all three branches of government and communities, similar to the makeup of the current Commission.

9. Begin a campaign to educate the public on the urgency of taking action and importance of community support

10. Establish an oversight group to develop these initiatives and monitor progress made in reducing the demand for prison resources

11. Begin construction of the planned 300 beds at the St. Mary's Correctional Complex

The Commission believes that there is need for additional bed-space for the Division of Corrections in spite of all other efforts to divert or shorten length of stay. As previously mentioned, the Division of Corrections has experienced an explosion of offenders sentenced to their custody for which they have no bed space. Currently, St. Mary's has no single cell or segregation unit which causes the Division of Corrections to transport offenders who have been found guilty of disciplinary violations. The addition of 300 beds/cells at St. Mary's will reduce transportation costs and improve security. Plans have already been drawn up for this facility, and it comes as close to "shovel ready" as any prison construction or bed-space acquisition project the state has.

12. Build or acquire at least four additional 80 bed Work Release Centers for lower security inmates preparing to return to community life

The location of these facilities should be determined by the Division of Corrections. Work Release Center facilities could be purchased or leased and would be spread around the state in regional areas from which offenders originate and in close proximity to where offenders are anticipated to return to the community. These facilities would cumulatively increase capacity by approximately 320 beds and enable easier delivery of programming identified for the individual offender while preparing them for work in the job market.

13. Special Offender Populations

The Commission believes the state should explore the acquisition of under-utilized or abandoned private facilities for conversion to work release centers or special offender population facilities.

One such special offender population is the elderly or long term populations. As offenders begin to age, their physical health decreases and medical disorders and ailments increase. The Division of Corrections currently has more than 250 offenders over the age of 60, 35 of whom are over 70 years of age. There are 373 offenders serving sentences of "life with mercy", and 261 offenders serving sentences of "life without mercy." These figures do not include offenders who are serving extremely lengthy sentences of 40 or more years. Additional and appropriate facilities are needed to deal with the physical maladies that effect an aging population.

Substance abuse (drugs and alcohol) is a major problem for offenders. **Approximately 85 percent of the offenders in Division of Corrections' custody have an alcohol or drug problem, and the majorities are poly-substance abusers (addicted to more than one substance). Many have mental illness in addition to addiction.** One of the primary reasons offenders recidivate is their substance abuse problem. A facility for severe substance abusers and those with mental illness would give the Division of Corrections latitude to create a long-term therapeutic community in which the offender's substance abuse problems and mental health needs could be better addressed.

A currently non-utilized facility could be adapted for lower classification offenders and used as a substance abuse and mental health unit at a lower cost than housing offenders in higher security facilities. In addition, if the facility is maintained as a "staff secure" facility, those offenders needing special medical care will be eligible for federal health care benefits – benefits not available to inmates in "hardware secure" facilities.³¹

The Commission's recommendations contemplate an aggressive investment in community level services for corrections, behavioral health, substance abuse services, job training, transitional living, probation and parole supervision, etc. With the aggressive implementation of these services, there is a chance of leveling the growth pattern of prisons while still reducing recidivism and maintaining a high level of public safety.

In order to avoid what the Commission views as potentially disastrous consequences in the regional jails, and ease the overflow of prison inmates, an immediate and aggressive agenda must be undertaken. Overcrowding is one of the key factors in disturbances inside jails and correctional facilities. The overflow

14. Construct a 1,200 Cell, Medium Security Prison in an area of the State accessible to adequate staffing for the institution

³¹ "Staff Secure facility" is one without locks, perimeter fences, etc., to keep inmates in the facility, rather than relying on staff to keep account of each person. A "Hardware Secure Facility" is the traditional prison, encompassed by securely locked doors, walls, fences and other technology from which no one can leave without some controlled release mechanism.

valve for our state prisons, the regional jail system, has become filled beyond its intended capacities. As of this report, for example, Southern Regional Jail is at 229 percent of design capacity; Western Regional Jail is at 172 percent of design capacity, South Central Regional Jail is at 161 percent of design capacity, and the Northern Regional Jail is above 126 percent of capacity.³² This stressful situation creates managerial problems for the hard working staff of the West Virginia Regional Jail Authority and makes their primary mission of serving misdemeanants and pre-trial detainees much more difficult. (See Appendix 2).

A plan that diverts low level offenders and encourages the shorter length of stay for similar offenders would result in the state's correctional institutions having a greater percentage of violent or more difficult offenders. Unfortunately, the haphazard approach from years past for acquiring prison space has left the state with prison bed space that does not readily meet the classification needs of the state's prison population.

Offenders within the Division of Corrections system are classified using a numbering system of 1 through 5. One (1) and 2 are the lowest levels of classification and those offenders who fall under this category are eligible for minimum security and/or community placement. Level 3 offenders are considered medium security. Level 4 and 5 are the highest offender classifications. Offenders with a classification score of 4 or 5 are those who have lengthy and/or violent criminal histories, a history of institutional violations, constitute the highest escape risk, and pose the highest security threat to the public, the institution and to fellow offenders. The ideal and proper housing for class 4 and 5 inmates is in a single cell environment.

Even now, the Division of Corrections has only 1,763 male prison cells – all other beds being in some lesser configuration. Currently there are in excess of 1,800 male prisoners classified in

³² June 11, 2009 population report from WV Regional Jail Authority

class 4 and 5. As we continue to send violent and other long term offenders to prison, we can expect the demand for prison cells to increase.

The construction of the St. Mary's addition and of the Work Release Centers represent correctional facility expansion needed to speed and improve the return to communities of those non-violent offenders who are admitted at a greater rate and with relatively short sentences. **The Commission understands, however, that West Virginia must continue to restrain those offenders who have proven violent and need special supervision. The Commission recommends building a 1,200 cell medium security prison.** The prison should be located, under the advice of professional demographers, in a location easily accessible to a labor pool sufficient to handle the variety of positions necessary to adequately staff a prison. While such a facility may be expensive, we believe it lies within the core values of protecting the public at large, the staff and visitors to the institution and the offenders themselves in a humane and safe manner.

Construction Cost Estimates

2003 WV Regional Jail
Construction

■\$160 per square foot

2009 WV Correctional
Residential Unit Construction

■\$230 per square foot

2009 Trade Magazine estimate
for Medium Security Prison
Construction

■\$255 per square foot

Conclusion

West Virginia faces a serious problem of prison overcrowding that is creating an equally serious management problem for our system of regional jails. **Past practices have brought us to this point where no single action will cover over or delay resolution of these issues.** No single branch of government should be held responsible for creating the problem, nor can any single branch resolve the problem by its own actions. **What is clear to all is that urgent action is needed.** The potential negative consequences of inaction could arise from within any of our prison or jail facilities, or through actions of a state or federal court making its own judgments and issuing demands for improvement.

By consensus the Commission has come up with 14 recommendations to resolve these issues. These recommendations revolve around the themes of: 1) greater use of alternative sanctions and diversion of persons, where possible, who have mental health or substance abuse issues into services that will prevent criminal behavior; 2) reducing the length of time that offenders spend in prison based upon their criminogenic tendencies being met with appropriate treatment; and 3) the construction and acquisition of additional prison capacity of various security configurations based upon the dynamic nature of managing offenders sentenced to prison.

The Commission's vision is clear. It believes that with full implementation, we can avoid building another 3000 bed prison by the year 2017. Each recommendation must be implemented as all are needed to change the practices and policies that have brought us to this point. Implementation of these recommendations will require both cooperation of all three branches of state government, and the resolve and engagement of all of our communities across the state.

Engaging the public in dialogue on the necessity of the Commission's recommendations is vital. For many, being "smart on crime" rather than "tough on crime" will be a paradigm shift. Such a shift of thinking will also be necessary for those already engaged in our correctional and judicial systems.

During the course of the Commission's discussions, members noted that if the State is to resolve the issues of prison overcrowding, studies and research on the topic must continue and adequate funding and resources for this comprehensive solution must be found.

Appendix 1

Sentencing Law - Change Log					
Session	Year	Bill#	Short Title	Date	Old Sentence / New Sentence
Reg	2006	HB 4484	Stalking	3/8/2008	1-5 Yrs. / 1-5 Yrs.
Reg	2007	HB 2544	DUI With Death	3/10/2007	1-10 yrs. / 3-15 Yrs.
Reg	2007	HB 2408	Indecent Exposure to victims under 14	3/10/2007	Created / 1-5 Yrs.
Special	2006	HB 101	Child Protection Act of 2006	6/14/2006	
Reg	2006	HB 4588	Concealment of deceased human body	3/11/2006	Created / 1-5 Yrs.
Reg	2006	HB 3213	Malicious Assault on a Driver of Public Conveyance	3/11/2006	Created / 3-15 Yrs.
Reg	2006	HB 3049	Wanton Endangerment, Use of Fire	3/24/2006	Created / 1-5 Yrs.
Reg	2004	SB 166	DUI	2/18/04	1-3 Yrs. / Same
Reg	2004	HB 2200	Creating felony offense of Destruction of Property	4/5/04	Created / 1-10 Yrs.
Reg	2004	HB 4104	Creating felony offense of Scanning/Decoder Fraud	3/25/04	Created / 1-3 Yrs.
Reg	2004	HB 4373	New Crime of Interference with Traffic Control Device	3/25/04	Created / 1-3 Yrs.
Reg	2004	HB 4388	Fraud-Counterfeit-sales slips, code labels	4/20/04	Created / 1-3 Yrs.
Reg	2004	HB 4433	Elderly Abuse/Neglect	4/5/04	Created / 2-10 Yrs.
Reg	2004	HB 4433	Elderly Abuse/Neglect	4/5/04	Created / 5-15 Yrs.
Reg	2004	HB 4402	Soliciting Minor via Computer	4/8/04	Created / 2-10 Yrs.
Reg	2003	SB 39	False Fire Alarm-Increasing Penalty	3/27/03	30 days / 1-3 Yrs.
Reg	2003	SB 354	Clandestine Drug Lab	3/20/03	Created / 2-10 Yrs.
Reg	2003	HB 2763	Crimes against chastity/immorality/decency	3/27/03	Misdemeanor / 1-5 Yrs.
Reg	2003	HB 2885	Destruction of Property that provides public service	3/27/03	Created / 1-5 Yrs.
Reg	2002	SB 610	Attempt to commit crime punishable by life	4/20/02	1-5 Yrs. / 3-15 Yrs.
Reg	2001	SB 524	Aiding persons in custody	5/1/01	1-5 Yrs. / 2-10 Yrs.
Reg	2001	HB 2275	Disarm or Attempt to Disarm Law Enforcement Officer	4/27/01	Created / 1-5 Yrs.
Reg	2001	HB 2891	Unlawful taking of Firearms, 1st Offense	4/20/01	Created / 1-2 Yrs.
Reg	2001	HB 2891	Unlawful taking of Firearms, 2nd Offense	4/20/01	Created / 1-3 Yrs.
Reg	2000	SB 97	An offense by female	3/20/00	Concurrent / Consecutive
Reg	2000	SB 121	Punishment for 2nd/3rd offense of felony	3/20/00	Plus 5 or minimum doubled
Reg	2000	SB 121	Punishment for 2nd/3rd offense of murder	3/20/00	Life w/o parole
Reg	2000	SB 121	Punishment for 2nd/3rd offense of murder	3/20/00	Life
Reg	2000	SB 133	Obscene matter to minors	4/3/00	Misdemeanor / no more than 5 yrs.
Reg	2000	SB 133	Obscene matter to minors	4/3/00	Misdemeanor / no more than 10 yrs.-2nd offense
Reg	2000	SB 133	Obscene matter to minors	4/3/00	Misdemeanor / no more than 10 yrs.
Reg	2000	SB 153	Computer crime	3/17/00	Created / no more than 10 yrs.
Reg *	2000	SB 157	Subjecting incarcerated subjects to sexual acts	4/4/00	Misdemeanor / 1-5 yrs.
Reg	2000	SB 371	Crimes against Parole/Probation Officers	3/22/00	Created / various sentences
Reg	2000	HB 4340	Selling Drugs to minors	3/31/00	minimum 1 yr / minimum 3 yrs.
Reg*	1996	SB 82	Prohibits female genital mutilation	3/5/99	Created / 2-10 Yrs.
Reg	1996	SB 420	Leaving scene of MV accident involving injury/death	4/7/99	1-3 Yrs. / 1-10 Yrs.
Reg*	1996	HB 2022	Driving Motor Vehicle on suspended/revoked license	3/24/99	Created / 1-3 Yrs.

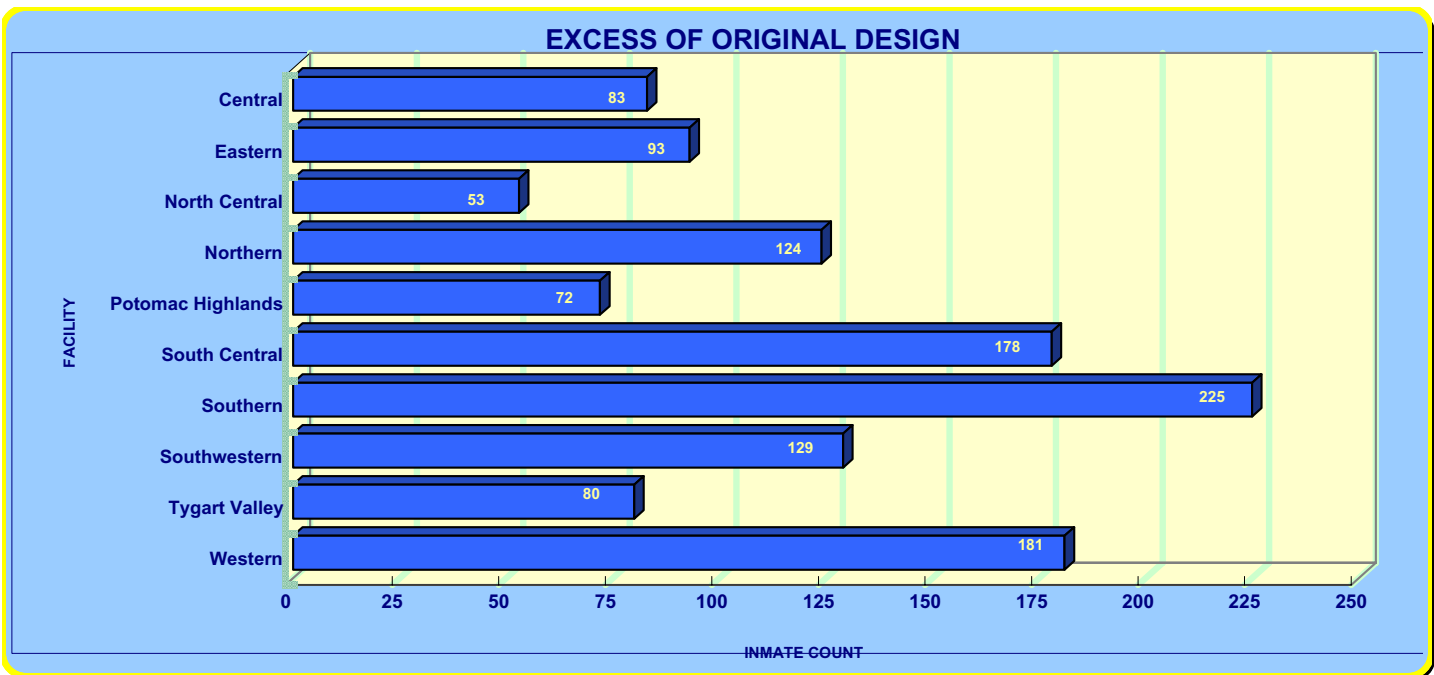
Appendix 1

Session	Year	Bill#	Short Title	Date	Old Sentence	New Sentence
Reg	1998	HB 4234	Taking identity of another for unlawful purposes.	4/6/98	Created	1-5 Yrs.
1st Special	1997	HB 101	Non Child Support	5/7/97	Misdemeanor	1-5 Yrs.
Reg*	1997	SB 134	Death of a child caused by neglect	5/29/97	Created	10-40 Yrs.
Reg*	1997	HB 2084	Abuse of incapacitated/vulnerable adults	5/5/97	Created	
Reg*			Penalties for intentional injury or death to animals used in law enforcement, fire prevention, and investigation	5/5/97		
Reg*	1997	HB 2205				
Reg*	1997	HB 2436	Illegal possession & killing of wildlife	4/15/97		
Reg	1997	HB 2473	Arson	5/1/97	Indeterminate	Determinate
Reg	1997	HB 2847	Battery of a Police Officer	5/7/97	Misdemeanor	2-5 yrs.
Reg	1996	SB 400	Explosives causing death/injury	4/1/96	Created	Bodily Injury 1-10
Reg	1996	SB 400	Explosives causing death/injury	4/1/96	Created	Serious Bodily Injury 3-15
Reg	1996	SB 400	Explosives causing death/injury	4/1/96	Created	Death-40
Reg	1995	HB 2702	Fleeing from law enforcement after felony offense	4/5/95	Created	1-5 Yrs.
Reg	1994	SB 64	Uniform controlled substance act	3/15/94	15-Jan	3-15 yrs within 1000 ft. school
Reg	1994	SB 1003	Escape from jail/prison confinement	4/5/94	Could be Concurrent	1-5 Consecutive to other crime
Reg	1994	SB 1007	Death of a child abuse/neglect	4/1/94		Minimum of 10
Reg	1994	HB 4512	Transportation of drugs & possession/distribution	3/10/94	Depends on Drug	Depends on Drug
Reg	1994	HB 4654	Increasing Penalties for Murder related crimes	3/28/94	1-5 indeterminate	3-15 Determin-Min 3yr. Or grtr >
Reg	1994	HB 4654	Increasing Penalties for Murder related crimes	3/28/94	1-3 Yrs.	3-15 years
Reg	1994	HB 4654	Increasing Penalties for Murder related crimes	3/28/94	10-lfe	15-lfe
Reg	1994	HB 4654	Increasing Penalties for Murder related crimes	3/28/94	5-18 Yrs.	10-40 determinate
Reg	1993	HB 2023	Stalking	4/2/93	Created	2nd Offense 1-5 yrs.
Reg	1993	HB 2102	Credit Card Fraud	4/1/93		1-10 Yrs.
Reg	1993	HB 2314	Assault & Battery on a Police Officer	5/3/93	Created	2-5 yrs.
Reg	1993	HB 2427	Domestic Violence	5/1/93		1-5 Yrs.
Reg	1993	HB 2652	Burglary & daytime entering who breaking with intent	5/3/93		1-10 Yrs.
	1991		First Degree Sexual Assault		15-30 Yrs	15-35 Yrs
	1991		Second Degree Sexual Assault		10-20 Yrs	10-25 Yrs
	1991		Incest		5-10 Yrs	5-15 Yrs.

Appendix 2

WV Regional Jail & Correctional Facility Authority								
INMATE COUNT								
Thursday, June 11, 2009								
FACILITY	CURRENT COUNT	STATE SENTENCED INMATES	FEDERAL INMATES	ORIGINAL DESIGN	EXCESS OF ORIGINAL DESIGN	BUNKS ADDED		EXCESS OF TOTAL BEDS
						Prior to 2009	In 2009	
Central	275	129	11	192	83	30		53
Eastern	381	76	35	288	93	0		93
North Central	437	68	15	384	53	0		53
Northern	316	129	13	192	124	31	50	43
Potomac Highlands	264	131	1	192	72	0		72
South Central	466	101	74	288	178	84	50	44
Southern	513	114	32	288	225	64	50	111
Southwestern	417	148	2	288	129	0		129
Tygart Valley	368	231	8	288	80	0		80
Western	565	210	0	384	181	0		181
TOTAL	4002	1337	191	2784	1218	209	150	859

****Please note that approximately 170 inmates were moved from the North Central Regional Jail to several other regional jails due to issues with the water.



Appendix 3

Suggested level of Investment by Initiative:

1. Adoption of Standardized Risk and Needs Assessment Instrument for all convicted felons in the system: \$500,000 annually. These monies should be included in annual operating budgets of courts, corrections, parole and local community criminal justice boards.
 2. Expand number of Probation Officers and Parole Officers: \$1,900,000
 - Expanded general fund support for community corrections programming requires \$1.5 million. Sustained General Fund support for community corrections programs needs to be at minimum of \$5 million in addition to the special funds that also support the programs.
 3. Contracted annual operating costs of Behavioral Health and Substance Abuse Community Service:
 - a. 90 day residential for young males 18-27: \$500,000
 - b. Medication Assisted Treatment: \$2,000,000
 - c. Ten day detoxification: \$4,000,000
 - d. 90 day residential for males: \$4,000,000
 - e. Transitional living for males: \$200,000
 - f. Twenty new Oxford Houses: \$820,000
 - g. Three new 50 bed recovery: \$300,000
- Total Annual Contracted Services: \$11,820,000
4. Transitional Housing Program similar to Georgia Plan: \$100,000
 5. Presumptive Parole: In addition to the costs associated with additional persons paroled to the community mentioned above at number 2, additional treatment resources within the Division of Corrections will be required to assure timely access to the treatment needs of the offenders.
 - Ten additional Correctional Counselor II at \$35,000 each = \$350,000 annually
 6. Comprehensive review of Criminal Code: Will depend on design of review program and involvement of parties outside of legislature and executive branch. We do recommend considering outside assistance from WVU Law School or some National Organization such as National Governors Association (NGA) or Council on State Governments (CSG). In addition participation by scholars of criminology and sociology should be part of discussion to bring the latest information on human behavior and identification of systems that work to reduce crime as well as provide punishment where appropriate and protection of the public safety into the discussion of criminal penalties.

Appendix 3

7. Improved Information Sharing: Will depend on level of sharing organized between branches of government. Need court data, probation data, community corrections data, DOC data, and parole data to be organized under agreed protocol. Office of Technology should be assigned task of bringing users together and identifying systems needs and report back with an estimate of additional investment.
8. Continual Evaluations of Community Corrections: \$200,000 annual
9. Information Campaign: Unknown
10. Establishment of Regular oversight group: \$250,000 annual
11. Construction 300 beds St. Mary's addition: \$18,750,000
12. Four additional 80 bed Work Release Centers: \$5,000,000 Acquisition cost:
Total annual operational costs for these Work Release Centers: \$3,400,000
13. Obtain special needs facility: Unknown cost, dependent on procurement price of available facilities and necessary modifications required for special correctional needs.
14. Costs for the construction of a 1200 cell correctional facility are estimated to be in the range of \$100,000,000 to \$200,000,000. Completion time will be in range of 3 to 4 years.

Appendix 4

Governor's Commission on Prison Overcrowding

Meeting Dates

	3/18/2009	4/14/2009	4/15/2009	4/16/2009	4/21/2009	5/27/2009	6/18/2009
Gubernatorial Appointees							
Bianconi, John	X	X				X	X
Carper, W. Kent	X	X			X	X	X
Federspiel, J. Norbert	X	X	X	X	X	X	X
Foreman, Dennis	X		X			X	X
Hamilton, Patricia	X			X	X	X	X
Harris, Elaine						X	
Lee, Jim	X	X			X	X	X
Lemaster, Kenneth	X	X					
Miller, Terry	X	X		X	X	X	X
Parsons, Vivian	X		X		X	X	X
Riopelle, Sandra	X			X	X	X	X
Roper, William	X					X	
Rubenstein, Jim	X			X	X	X	X
Sparks, Dennis	X		X			X	X
Spears, James	X	X	X	X	X	X	X
Walker, Steve	X		X			X	X
Watts, Matthew	X	X					
Wilson, Patrick	X		X		X	X	
*It is to be noted the meetings on 4/14 - 4/16 were for workgroups only.							
Invitees							
Alsop, Jack							
Barb, Riley	X						
Benjamin, Brent							
Birkhead, Elliott	X						
Canterbury, Steven	X	X			X	X	X
Davis, Robin							
Douglas, Brad	X	X	X	X	X	X	X
Helmick, Walt							
Kessler, Jeffrey	X		X		X	X	X
Ketchum, Menis							
Lacy, Mike	X	X			X	X	X
McHugh, Thomas							
Nolan, James	X			X		X	X
Perry, David							
Webster, Carrie							X
White, Harry Keith	X					X	
Workman, Margaret							

Attendance either in person or by proxy

